IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.654 OF 2006**

Housing & Urban Development)
Corporaltion Ltd.)
(HUDCO), a Company incorporated)
under the provisions ofCompanies)
Act, 1956 and having its)
registered officeat HUDCO Bhavan)
India Habitat Centre, Lodhi)
Road, New Delhi-110 003 and)
having its Regional Office at)
MMRDA Building, Bandra-Kurla)
Complex, Bandra (East),)
Bombay-400 051.)..Petitioners

Vs.

1.ENBEE Infrastructure Ltd.)
A Company incorporated)
under the provisions of the)
Companies Act, 1956 having its)
Registered office at Plot)
No.5, Zone-II, Maharana Pratap)
Nagar, Bhopal-462 011.)
2.Shri Prafulla Maheshwari,)
Director, ENBEE Infrastruture)
Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

3.Shri Brij Maheshwari,)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

4.Shri Sandeep Maheshwari,)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

5.Shri Shakil Qureshi,)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

6.Shri Suhas Bhand, Addl.)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

7.Shri Prashant Sahu, Addl.)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

8.Shri Nimish Maheshwari,)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

9.Shri Amul Urdhawarshi,)

Director, ENBEE Infrastruture)

Ltd., 5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

10.Madhya Desh Papers Ltd.,)

A Company incorporated under)

the provisions of Companies)

Act, 1956 having its)

registered office at East)

High Court Road, 15, Kachipura)

Park, New Ramdaspeth,)

Nagpur-10.)

11.Betwa Realtors Pvt. Ltd.)

A Company incorporated under)

the lprovisions of Companies)

Act, 1956 having its)

registered office at Plot)

5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

12.Amarkantak Farms Pvt. Ltd.)

A Company incorporated under)

the lprovisions of Companies)

Act, 1956 having its)

registered office at Plot)

5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

13.Surya Agroils Ltd.,)

A Company incorporated under)

the lprovisions of Companies)

Act, 1956 having its)

registered office at Plot)

5, Zone II, M.P. Nagar)

Bhopal-462 011 Madhya Pradesh)

14.Enbee Finlease Ltd.,)

A Company incorporated under)

the lprovisions of Companies)

Act, 1956 having its)

registered office at Plot)

5, Zone II, M.P. Nagar)

Bhopal-462 011)

15.Betwa Finlease Ltd.,)

A Company incorporated under)

the lprovisions of Companies)

Act, 1956 having its)

registered office at Plot)

5, Zone II, M.P. Nagar)

Bhopal-462 011)

16.CICON Environment)

Technologies Pvt. Ltd.(CINCON)

A Company incorporated under)

the provisions of Companies)

Act, 1956 having its)

registered office at 61-B)

Kausturba Nagar, Bhopal)

462 024.)..Respondents

Mr. D.H. Mehta with Mr. Rajan K. Kakkara for the Petitioners.
Mr. Anand Kumar for Respondent No.1 and 10 to 15.
Mr. Akshay Arora for Respondent Nos. 2 to 4 and 8.

CORAM: **F.I. REBELLO &**
MRS.V.K.TAHILRAMANI, JJ.
DATE: 2nd August, 2006

ORAL JUDGMENT:(PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioners by the present petition are challenging the order dated 17th February, 2004 passed below Exhibit 15 in Original Application No.447 of 2002 by the Debt Recovery Tribunal No.III at Mumbai and the order dated 13th July, 2005 passed by the Debt Recovery Appellate Tribunal, which dismissed the Appeal preferred by the Petitioner herein. The D.R.T. by the impugned order allowed the application filed by the Respondent on the ground that it had no territorial jurisdiction. While disposing of the said application the Tribunal directed the petitioners herein whilst returning the plaint to pay costs of Rs.5,000/- to the Respondents.

3. It is contended on behalf of the petitioners that the impugned order suffers from an error of law apparent on the face of the record, in as much as the learned Tribunal has not considered the pleadings on record and has thus misdirected itself in law, while setting out in para.3 of the order that the petitioners have admitted that the Applicant bank is not functioning within the local limits of the Tribunal. It is set out that there is no such admission and on the contrary the Respondents

themselves have admitted in para.3 of their application as under:-

> "...More over the mere sanction and disbursement of the loan in Mumbai cannot give rise to the present lis as the mere disbursement and sanction of the loan is not sufficient to give rise to any cause of action for the Applicant to file the present application and therefore the Application filed is not maintainable before this Hon'ble Tribunal."

4. It is also pointed out on behalf of the petitioners that the Tribunal totally ignored Rule 6 of the Rules framed under the Act. Rule 6 reads as under:-

> "6. **Place of filing applications.-** The application shall be filed by the applicant with the Registrar within whose jurisdiction the applicant is functioning as a bank or financial institution, as the case may be, for time being."

It is pointed out that the petitioners are functioning within the jurisdiction of the Tribunal and, therefore, the Tribunal had jurisdiction to hear and decide the said application. In so far as the

guarantor is concerned, it is pointed out that it was open to them even if there be two Courts having jurisdiction to have preferred the application against the guarantors before the Tribunal.

. Our attention is invited also to Article 8.1 which reads as under:-

> "All moneys due and payable to HUDCO under this agreement shall be paid and remitted by the Borrower to the HUDCO at its registered office at "HUDCO BHAWAN", India Habitat Centre Complex, Lodhi Road, New Delhi -110 003 (unless otherwise directed by HUDCO) in proper time and the borrower shall so arrange that the amount(s) in question is/are realisable by HUDCO at par on the due dates of the relative payment in New Delhi."

5. On the other hand on behalf of the respondent No.1 principal debtor it is pointed out that the order of the Tribunal does not suffer from any error apparent on the face of the record. No part of the cause of action has arisen within the territorial jurisdiction of this Court and consequently this Court ought not to interfere with the impugned order of the Tribunal and the Appellate Tribunal.

In so far as guarantors are concerned, there is

separate agreement of which Clause 23 is relevant and which reads as under:-

> "23. In the event of default in payment of HUDCO dues the Civil Court of Delhi shall have the jurisdiction to entertain any suit or matter relating to the enforcement of the Guarantee."

It is, therefore, submitted that even if a part of the cause of action has arisen within the territorial jurisdiction by virtue of Clause 23 the parties have agreed that it is the Civil Court at Delhi alone which will have jurisdiction. As the D.R.T. Act has now been conferred with the jurisdiction of the Civil Court It is the Tribunal at Delhi alone which will have jurisdiction. In the light of that it is submitted that the finding of the Tribunal on that count cannot be faulted.

6. We have heard learned Counsel for the parties. We may at once refer to the judgments cited at the bar to find out whether those Judgments conclude the issue in the matter. In **Hakam Singh vs. Gammon (India) Ltd. 1971 (1) SCC 286** the issue before the Apex Court was on an issue of two Courts having jurisdiction. If there be two Courts having jurisdiction it is open to confer jurisdiction on one of the Courts and if such an exercise has been done

it is not in violation of Section 28 of the Indian Contract Act. The Court held that such an Agreement would not be contrary to public policy. Considering the Code of Civil Procedure as it then stood the Court answered another issue by holding that the expression "Corporation" includes a company. In **Patel Roadways ltd., Bombay vs. Prasad Trading Company, (1991) 4 SCC 270** the issue before the Apex Court was the defendant company/corporation had its principal office at one place and subordinate office at another place and cause of action arises at the place where the subordinate office is located, where should the suit be filed, namely before the Court within whose jurisdiction the company/corporation has its subordinate office and or the Court within whose jurisdiction it has its principal office. This was answered by holding that the suit had to be filed in the place where the office of the company was located and carrying on business and not the principal office. This judgment is subsequent to the amendment to C.P.C. The import of this judgment will be that in respect of a cause which has arisen where a company/corporation has a subordinate office then the company/corporation can only file a suit at such office where the cause of action has arisen. This is how the Apex Court expressed itself:-

> "....The clear intendment of the Explanation, however, is that, where the corporation has a

subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the Corporation's place of business, not an additional one."

. In **A.B.C. Laminart Pvt. Ltd. and Anr. vs. A.P. Agencies, Salem, AIR 1989 SC 1239**, the **Apex** Court reiterated the law that a clause providing for conferment of jurisdiction on a Court would not be contrary to Section 23 and 28 of the Contract Act as long as the Court on whom jurisdiction has been conferred, a part of the cause of action had arisen within the jurisdiction of that Court.

. In **M/s.Shriram City Union Finance Corporation Ltd. vs. Rama Mishra AIR 2002 SC 2402** the law as

set out in Hakam Singh (supra) and A.B.C. Laminart Pvt. Ltd. (supra) was reiterated.

. In **Shree Subhlaxmi Fabrics Pvt. Ltd. vs. Chand Mal Baradia & Ors., AIR 2005 SC 2161** once again the judgment in A.B.C. Laminart Pvt. Ltd. was reiterated.

7. The question that will have to be considered is, the scope of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 hereinafter referred to as the DRT Act and Rule 6 of the Rules made thereunder. Section 19 in respect of territorial jurisdiction provides for the following three situations:-

a) the Defendant, or each of the Defendants where there are more than one, at the time of making application, actually and voluntarily resides, or carries on business, or personally works for gain; or

b) any Defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

c) the cause of action, wholly or in part, arises.

. In the instant case we are concerned with clause (c), namely wherein the cause of action, wholly or in part, arises. We have earlier reproduced Rule 6. Rule 6 clearly sets out that the financial institution can institute the proceedings in the place where it carries on business. In the instant case the petitioners are admittedly carrying on business in a place where they had a subordinate office having it office in Mumbai. Considering the judgment of the Apex Court in Patel Roadways (supra) as the petitioners were carrying on business in a place where they had a sub-ordinate office and the prima facie averments on record, would indicate that as set out by the respondents themselves in the application for ouster of jurisdiction, there was material before the Tribunal to hold that it had jurisdiction.

8. However, considering that the issue is of jurisdiction and as the Tribunal will have to record a specific finding of fact, in our opinion the ends of justice would be met, if the impugned orders are set aside, in so far as the respondent No.1 and costs are concerned and the matter is remanded back to the Tribunal for deciding the issue of territorial jurisdiction afresh, bearing in mind what we have set out in this judgment and the material on record.

9. In so far as the guarantors are concerned, we

do not propose to interfere with the order of the Tribunal. However, as the record is the same and the question of returning the record would not arise, it will be open to the petitioner to file an independent application in so far as the guarantors are concerned as in law they can so do. and to apply to the Tribunal at Delhi. Considering the provisions of Limitation Act the Tribunal to consider exclusion of time, bonafide taken in prosecuting the present proceedings before the Debt Recovery Tribunal, the Appellate Tribunal and before this Court if an issue of limitation arises.

11. Rule made partly absolute accordingly. There shall be no order as to costs.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**